United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: February 9, 2001

TO : Elizabeth Kinney, Regional Director

Region 13

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Carpenters Local Union No. 13

(Millenium Construction)

Case 13-CD-601

This case was submitted for advice on whether Union statements constituted a demand for work and a violation of Section 8(b)(4)(D) in conjunction with apparently lawful area standards picketing.

Millenium is a subcontractor performing certain work at two construction sites. Millenium is signatory with the Laborers whose area standards wage/benefit rate is \$31.47/hour. Millenium's president/owner, Evtimov, had two conversations with Carpenter's Representative Sexton, in June and December 2000, respectively. [FOIA Exemptions 6, 7(C), and 7(D)

].

Regarding the first conversation in June 2000, shortly after Millenium signed the Laborers' contract, Sexton asked if Millenium was union and Evtimov replied yes. [FOIA Exemptions 6, 7(C), and 7(D)], Sexton asked which union and Evtimov replied Laborers Local 6, handing Sexton the Laborers' business card. [FOIA Exemptions 6, 7(C), and 7(D)

], Sexton added the following admonishment: You cannot do that. That's Carpenter's work. You cannot do the carpenter work with ... Local 6. When Evtimov told Sexton that he should discuss that the Laborers whether Millenium could or could not do, Sexton replied We'll see. 1

¹ Sexton did not relate this June conversation with Evtimov, [FOIA Exemptions 6, 7(C), and 7(D)] Sexton Evtimov failed to call him as promised. Therefore on September 15, 2000, Sexton sent Millennium an area standards inquiry asserting that Millenium was engaged in carpentry work but paying below area standards. The letter threatened that the Carpenters would take "appropriate action" if Millenium did

Evtimov had a second conversation with Sexton on December 27, 2000, the day before the Carpenters began area standards picketing. Evtimov admitted that Millenium was doing carpenter work and Sexton demanded to talk to the Millenium's employees performing that work. Two Millenium employees arrived and showed Sexton their Laborers' union cards. Sexton then asked Evtimov what work Millenium was performing at the other jobsite. Evtimov replied, metal studs, framing, trim and cabinets. [FOIA Exemptions 6, 7(C), and 7(D)], Sexton stated That's still carpenters' work. Sexton then asked what were the laborers' wages. Evtimov replied \$25.41; Sexton stated, You're doing all my carpenter work.

[FOIA Exemptions 6, 7(C), and 7(D)], when Evtimov stated that Millenium was doing carpentry work, Sexton stated That's carpenters jobs, you cannot do that. That's carpenters jobs, not laborers. When Evtimov offered Sexton the Laborers' business card, Sexton replied, That's carpenters' jobs and you keep using laborers. We'll see about that.

The following day, December 28, 2000, the Carpenters began picketing one of the two Millenium job sites with area standards signs. The Carpenters began similar picketing at the second Millenium site on the following day. The picketing is ongoing at both sites.

We conclude that "an object" of the Carpenters' area standards picketing was to support its claim for the disputed carpentry work, in violation of Section $8\,(b)\,(4)\,(D)$.

First we conclude that Sexton's assertion in June, i.e., That's Carpenter's work. You cannot do the carpenter work with ... Local 6, together with Sexton's assertions in December, i.e., That's carpenters' jobs and you keep using laborers. We'll see about that, amounted to a Carpenters' claim for the disputed work.

In <u>Plumbers Local 612</u>, ² a subcontractor was laying storm pipe with its own employees who were represented by the Plumbers. The Laborers were signatory to a bargaining

not provide contrary documentation within three days. It is undisputed that Millenium never replied to this area standards letter inquiry.

² <u>Plumbers Local 612 (Mechanical, Inc.)</u>, 298 NLRB 793 (1990).

agreement with the job site general contractor. A Laborers representative arrived at the jobsite and asked the project foreman, who was a member of the Plumbers, about certain installation work. When the foreman suggested that the Laborers representative direct his questions to a Plumbers representative, the Laborers representative stated that the foreman was doing the work of the Laborers Local.

Around one month after that conversation, the Laborers filed a grievance against the general contractor alleging a violation of the contractual subcontracting clause. In a later conversation between all three parties, the Plumbers threatened to picket the project if the general contractor reassigned the disputed work to employees represented by Laborers. The Board found reasonable cause to believe that Section 8(b)(4)(D) had been violated. In particular, the Board found that the Laborers' representative's "statement to [the foreman], as well as his filing of the grievance, constituted a demand for the work." Id. At 794.

In the instant case, Carpenters' representative Sexton made several remarks of essentially the same nature as the single remark found to constitute a claim for work in Plumbers Local 612. Here, as there, Sexton stated that Millenium was doing the work of the Carpenters. Therefore, we find that the instant case involves a competing claim for work by the Carpenters. We further find that the Carpenters' picketed in support for this work claim as an additional object to the area standards object.

In <u>Roofers Local 30</u>, ³ the union approached the employer two days before engaging in apparently lawful area standards picketing. The union protested the employer's failure to hire union employees, arguing that the employer had a union contract which applied to certain work in dispute. The Board found reasonable cause to believe the union had violated 8(b)(4)(D) on the ground that at least "an object" of the union's area standards picketing was in support of its claim for the work asserted two days earlier.

We reach the same result here. The Carpenters' area standards letter inquiry, sent in September 2000, threatened "appropriate action" if Millenium failed to refute the letter's allegations within three days. Yet the Carpenters did not commence area standards picketing until some three and one-half months later. More to the point,

³ Roofers Local 30 (Gundle Lining Construction), 307 NLRB 1429 (1992).

the Carpenters' area standards picketing began immediately after the Carpenters once again claimed the work in dispute. In addition, the picketing began immediately after the conversation in which, when Millenium offered the Laborers' union card in defense of its performing the disputed carpentry work, Carpenters' representative Sexton said we'll see about that. Thus the area standards picketing was not merely remote in time from the Carpenters' area standards inquiry. The picketing began immediately after, and was impliedly linked to, a claim for the disputed work. In our view, these circumstances present reasonable cause to believe that the Carpenters are violating Section 8(b)(4)(D).

B.J.K.